the taking of possession by the purchaser as in substance a common-law conveyance by livery of seisin. See Roscoe Pound, "The Progress of the Law — Equity," 33 HARV. L. REV. 929, 941–943. To-day such possession is regarded as sufficient because it is solely referable to a contract concerning this land. Clearly the possession of the purchaser's agent is the possession of the purchaser. See *Wharton* v. *Stoutenburgh*, 35 N. J. Eq. 266. In the principal case, the possession of the contract beneficiary, taken at the instigation of the purchaser and with the assent of the vendor, must equally be regarded as the possession of the purchaser. However astray from "the right line of progress toward a satisfactory law upon this subject," which would require, beyond possession solely referable to the contract, irreparable injury to the purchaser if specific performance is denied, the decision clearly indicates the state of the prevailing authorities. See Roscoe Pound, "The Progress of the Law — Equity," *supra*, 944, 945; 15 HARV. L. REV. 659.

SURETYSHIP — SURETY'S RIGHT TO EXECUTION AT LAW UPON A JUDGMENT PROCURED BY THE CREDITOR AFTER PAYMENT BY THE SURETY. — A creditor obtained a judgment against the principal debtor and his surety. After payment by the surety, the judgment was assigned to him. Execution was levied upon this judgment against the property of the principal who now moves to quash the execution. *Held*, that the execution be quashed. *Grizzle* v. *Fletcher*, 105 S. E. 457 (Va.).

At law the payment of a joint obligation by one of the obligors extinguishes the obligation. *Booth* v. *Farmers & Mechanics' Nat. Bank*, 74 N. Y. 228. See 1 WILLISTON, CONTRACTS, § 332. And taking a narrow view, English courts of equity refused to allow a surety to be subrogated to the advantages of the creditor, such as bonds or judgments, which were legally destroyed by payment of the debt by the surety. *Copis* v. *Middleton*, 1 Turn. & R. 224; *Armitage* v. *Baldwin*, 5 Beav. 278. But this has been changed by statute in England. See MERCANTILE LAW AMEND. ACT, 19 & 20 VICT., c. 97, § 5. And to-day in most American jurisdictions equity keeps alive the original obligation so that a surety who has paid may be subrogated to a judgment rendered against himself, his principal, and his co-sureties. *Furnold* v. *Bank of the State of Missouri*, 44 Mo. 336. See 2 WILLISTON, CONTRACTS, § 1268. This often becomes important in establishing priority. *Hill* v. *King*, 48 Oh. St. 75, 26 N. E. 988. For a surety's right to reimbursement only arises upon his payment to the creditor. *Blanchard* v. *Blanchard*, 201 N. Y. 134, 94 N. E. 630. By statute many states allow execution at law upon such a judgment without requiring any decree of equity. *Kimmel* v. *Lowe*, 28 Minn. 265, 9 N. W. 764; *Garvin* v. *Garvin*, 27 S. C. 472, 4 S. E. 148; *Ezzard* v. *Bell*, 100 Ga. 150, 28 S. E. 28. And a few courts permit this without a statute if the suretyship relation was established in the former action and the judgment has been assigned to the surety. *Nelson* v. *Webster*, 72 Neb. 332, 100 N. W. 411; *Williams* v. *Riehl*, 127 Cal. 365, 59 Pac. 762. Since these factors were present in the principal case, the decision indicates a close adherence by the Virginia Court to the separation of legal and equitable relief.

TRUSTS — *CESTUI QUE TRUST'S* INTEREST IN *RES* — TRUST FOR EDUCATION AND MAINTENANCE. — The testator bequeathed his estate in trust to pay £13 a year to a named educational institution for the maintenance and education of his son, then aged four, and directed that if the son died before the estate was exhausted the balance should be applied in care of a certain grave. The expense of the son's education was borne by his mother, and at his majority the estate, which amounted to about £100, was still intact. *Held*, that the son is entitled to the money. *In the Will of O'Rourke*, [1920] V. L. R. 546.

Where the purpose of an express trust is fulfilled or fails and a surplus remains, there is normally a resulting trust to the donor or his heirs. *Easterbrooks* v. *Tillinghast*, 5 Gray (Mass.) 17; *Hopkins* v. *Grimshaw*, 165 U. S. 342. But this rule does not apply where there are circumstances indicating an intention that the trustee or *cestui que trust* should take beneficially. *Clarke* v. *Hilton*, L. R. 2 Eq. 810. English courts find such an intention when a gross sum or the total income of property is given in trust, and allow the beneficiary to take absolutely, construing any special purpose assigned as merely indicative of the donor's motive. *In re Andrew's Trust*, [1905] 2 Ch. 48; see *In re Sanderson's Trust*, 3 K. & J. 497, 503. Even where the donor has tried to limit the *cestui que trust's* right, as by the attempted creation of a spendthrift trust, in some jurisdictions the property is nevertheless his. Though the trustees are to apply the property to his support, if they cannot deprive him of his vested estate creditors may reach it as the *cestui que trust's* own. *Green* v. *Spicer*, 1 R. & My. 395; *Hutchinson* v. *Maxwell*, 100 Va. 169, 40 S. E. 655. *A fortiori* where there is no question of contravening the donor's intent, the beneficiary should be absolutely entitled to the property in any jurisdiction, where the special purpose is not the *raison d'être* of the trust. It is a reasonable assumption in the principal case that the testator primarily intended that his son take the estate beneficially and that his mention of a particular institution was merely a direction as to the application thereof.

VENDOR AND PURCHASER — REMEDIES OF VENDOR — ENFORCEABILITY OF EXPRESS LIEN WHEN STATUTE OF LIMITATIONS BARS DEBT. — The defendant conveyed land to a third party, expressly reserving in the deed a lien for the unpaid purchase price. The third party conveyed to the plaintiff, who did not assume the debt. The plaintiff sues to quiet his title, the Statute of Limitations having run on the debt. The bill also alleged laches. *Held*, that the bill be dismissed. *Wilson* v. *Davis*, 86 So. 686 (Fla.).

For a discussion of the principles involved in this case see NOTES, page 779, *supra*.

WAREHOUSEMEN — WAREHOUSE RECEIPTS: PLEDGE OF A NEGOTIABLE RECEIPT TO THE ISSUING WAREHOUSEMAN. — The plaintiff sent goods to a factor for sale on commission. The factor stored the goods in the defendant's warehouse, taking a non-negotiable receipt. Subsequently he exchanged this receipt for a negotiable receipt, and immediately indorsed and delivered the latter to the defendant, as collateral security for a loan to himself. The defendant knew nothing of the agency, and acted throughout in good faith. The plaintiff brings replevin for the goods in the defendant's hands. A statute makes warehouse receipts negotiable "in the same manner as inland bills of exchange." The Uniform Sales Act is in force. *Held*, that the plaintiff can recover. *Decker & Sons* v. *Milwaukee Cold Storage Co.*, 180 N. W. 256 (Wis.).

It is an old and well-settled principle that a factor with authority to sell has no right to pledge the goods for his own debt, and that his pledgee acquires no rights against the principal. *Paterson* v. *Tash*, 2 Strange, 1178; *Allen* v. *St. Louis National Bank*, 120 U. S. 20. Nor can a factor make a valid pledge by taking, without authority, a negotiable warehouse receipt for the goods, and pledging it. *Commercial Bank* v. *Hurt*, 99 Ala. 130, 12 So. 568. But if he has express or implied authority to store the goods and take a negotiable receipt for them, a *bona fide* purchaser or pledgee of the receipt is protected against the prior owner. *Commercial Bank* v. *Canal-Louisiana Bank*, 239 U. S. 520. (This case was decided on the basis of §§ 40, 41, and 47 of the Uniform Warehouse Receipts Act; §§ 32, 33, and 38 of the Sales Act are to the same effect.) In the principal case, the court did not consider the extent of the factor's authority to warehouse. Nor did it consider whether, in any event, the maker of